

BOARD OF APPEALS
for
MONTGOMERY COUNTY

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
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Case No. S-2459
and
Case No. S-2460

PETITION OF HAMPSHIRE VILLAGE ASSOCIATES, LIMITED PARTNERSHIP
and

PETITION OF VICTORY HOUSING, INC.

(Hearings held January 9, 16, 23, 30, February 6, 13, 14, 26, March 21, April 3, 4, 10,
May 1, 16, 22, 30, June 5, 13, 19, 20, and 26, 2001)

OPINION OF THE BOARD
(Effective date of Opinion: August 16, 2001)

CORRECTED OPINION: CLERICAL CORRECTION – CONDITIONS FOR
CASE NO. S-2460

Case No. S-2459 is a petition filed by Hampshire Village Associates Limited Partnership for a special exception to permit the construction and operation of a 130-unit residence for independent elderly persons pursuant to Section 59-G-2.35 of the Montgomery County Zoning Ordinance (being also Chapter 59, Montgomery County Code 1994, as amended) hereafter the “Zoning Ordinance.”

Case No. S-2460 is a petition filed by Victory Housing, Inc. for a special exception to permit the construction and operation of an assisted living facility containing 30 beds and related facilities pursuant to Section 59-G-2.37 of the Zoning Ordinance. Case No S-2459 and Case No. S-2460 pertains to the same property and were consolidated for public hearing and decision.

Decision of the Board: Special Exception S-2459 **GRANTED**, subject to
conditions enumerated below

Special Exception S-2460 **GRANTED**, subject to
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Public hearings were held on January 9, 2001, and concluding on June 26, 2001 pursuant to Section 59-A-4.11 (a) of the Zoning Ordinance. Stephen J. Orens of Dufour and Kohlhoss represented both applicants. Mr. Orens called eleven witnesses in support of the applications: Philip E. Perrine, PE, AICP, a land planner, Scott Wolford, a landscape architect, Logan E. Schutz, the site architect, Brian McCarthy, the architect for Victory Housing, Inc., Joseph Howell, a housing and market analyst, Afsi T. Niko, PE, a civil engineer, John W. (Wes) Guckert, a traffic and transportation engineer,

Umesh Bhargava an engineer, Ken Roth a lighting consultant, James Brown, President of Victory Housing, Inc., and Jeffrey C. Kirby, Vice President of Stavrou Associates, Inc. The Applicants' counsel also called Elizabeth Davidson, Director of the Montgomery County Department of Housing and Community Affairs. Jeffery E. Retterer also testified in support of the applications. In addition the Board received seventy seven (77) letters in support of the applications. (Exhibit Nos. 79.1 through 79.77).

Other witnesses testifying in support of the application were: Jim Michaels, Rebecca Wagner, representing the Community Ministry of Montgomery County, Bud Tardiff, President of Leisure World Trust and Chairman of the Leisure World Community Council, Lois Christeller, a resident of Leisure World, Teresa Warnick, representing AIM, and Mary Taylor, a resident of Randolph Village.

Richard Kauffunger, representing himself and the Layhill Alliance, Cary Lamari, representing himself and the Norbeck Citizens Association, David Diffenbach, along with William Schofield, Leslie Backus, Jean Swift, Janet Barlow, Nicholas Chahal, Ralph Nose, Eileen Weiss, Joe Lamari, Richard Nafzgar, Wanda Lamari, Vincent Bailey, Tracy Bailey, Kleto Baretta and Greg Cassidy, appeared in opposition. In addition the Board received thirty-eight (38) letters in opposition. (Exhibit Nos. 33, 34.1 through 34.13, 183.1 through 183.3 and 238).

The Board also heard testimony from Joseph R. Davis, Chief of the Development Review Division of the Montgomery County Department of Park and Planning of the Maryland-National Capital Park and Planning Commission ("M-NCPPC"). Other M-NCPPC staff called by the Board to testify were: Khalid Afzal of the Community Based Planning Division, Sally Roman, a housing and demographic supervisor in the Research and Technology Division and Janet Gregor, a transportation planner in the Transportation Planning Division. At the request of Applicants' counsel, Randy Wyrick of the Montgomery County Department of Permitting Services was also called as a witness.

Martin Klauber, Esquire, the People's Counsel of Montgomery County, participated in the proceedings and supported approval of the two requested Special Exceptions.

EVIDENCE PRESENTED

Both Application No. S-2459 and Application No. S-2460 were filed on November 7, 2000. The evidence in support of both applications presented at the consolidated hearings was coordinated to provide a complete picture of the development proposed for the site by both special exception proposals. Portions of the evidence, however, relate to one but not both applications. The evidence in Application No. S-2459 will be discussed first.

Case No. S-2459

1. Hampshire Village Associates Limited Partnership amended its application four times after its initial filing on December 7, 2000. The first amendment was filed prior to the commencement of the hearings before this Board and modified the design of the proposed building in response to issues raised by the Technical Staff Report prepared by the staff of M-NCPPC on December 1, 2000. (Exhibit Nos. 4(b), 5(b), (d), (f), (h) and

(j)). The second revision, (Exhibit Nos. 37(a)-(d)), modified the landscaping plan following a hearing before this Board which raised issues about whether the proposed landscaping and tree conservation areas would provide adequate screening for residential properties located to the immediate east of the Subject Property. The third amendment, (Exhibit No. 182 (d)), followed the applicants' engagement of Ken Roth, a lighting consultant who recommended substantial revisions to the lighting plan. The final amendment, (Exhibit Nos. 198 (a)-(f)), filed on May 11, 2001, modified the ingress and egress to the Subject Property and reduced the height of the independent living residence from a three-story/four-story building to a three-story building by extending three of the four side wings of the structure.

2. Prior to the Board's consideration of each of the amendments, a period of at least ten days time was provided to the parties participating in the proceedings and the People's Counsel to enable them to review and prepare to respond to the amendments pursuant to Section 59-A-4.24 of the Zoning Ordinance and Section 5.0 of the Board of Appeals Rules of Procedure.

3. Following the final amendment this Board requested that the Technical Staff and Montgomery Planning Board conduct an analysis of the amendment and provide a supplemental recommendation to this Board. (Exhibit No. 247). Khalid Afzal of the Technical Staff presented the Planning Board and staff recommendations at the final hearing on June 26, 2001.

4. The Subject Property is zoned RE-2/TDR and contains 8.27 acres of land. It consists of a 6.47 acre recorded lot (Parcel 1 Spring House at Norbeck) and two unrecorded parcels of land containing 0.8 and 1.0 acres respectively. It has a base density of one dwelling unit per two acres and a TDR density of two dwelling units per acre if developed under the TDR optional method established by the Zoning Ordinance. 336 feet of the Norbeck Road frontage of the two unrecorded parcels will be dedicated for the Master Planned widening of that road.

5. The Subject Property is an irregularly shaped rectangle that is slightly wider at its northern property line than it is at the southern property line. The site previously contained two residential structures both of which were demolished by prior owners. It is a partially wooded site as reflected on the Natural Resources Inventory/Forest Stand Delineation (NRI/FSD) approved prior to the filing of the subject applications. (Exhibit Nos. 103 and 240(e))¹. Portions of the forested area of the Subject Property will be preserved as a Category I Conservation Area as depicted on the revised Preliminary Forest Conservation Plan (Exhibit Nos. 207 and 240(f)). An existing Conservation Easement established at the time of recordation of the plat creating the record lot portion of the Subject Property will be released and replaced with the Conservation Area proposed by the present applications. (Exhibit No. 7).

6. The Subject Property is relatively flat having a gently rolling topography, with the lowest portion of the property located in the southeast corner, the proposed location for the storm water management facility that will provide both quantity and quality control of storm water. (See Exhibit Nos. 10(a); 10(b), 43, 70 and 94).

7. A Special Exception, Case No S-2237, for the construction and operation of a domiciliary care home for 109 residents on a portion of the Subject Property was

¹ Unless otherwise indicated by "S-2460" all Exhibit references are to No. S-2459.

approved on November 29, 1996. That application was subsequently modified to reduce the number of beds to 64 and modify the building and site plan. Special Exception S-2237 was never implemented and has now expired. (Exhibit No. 50. pg. 3). Subsequent to the approval of the prior Special Exception, that portion of the Subject Property identified as Parcel 1 Spring House at Norbeck was subdivided as a recorded lot by Preliminary Plan 1-97023, (Exhibit No. 135), and a plat of subdivision was recorded for that lot on May 8, 1997. (Exhibit No. 7).

8. The area immediately surrounding the Subject Property is zoned RE-2, RE-2/TDR and PRC. The New Apostolic Church is located to the immediate east of the Subject Property fronting on both Norbeck Road and Baileys Lane. Continuing south along Baileys Lane are three single-family houses and a vacant tract of land all in the RE-2 Zone. Other single-family houses are located beyond the southern boundary of the Subject Property along Baileys Lane in the R-200 Zone. The Baileys Lane portion of the surrounding area includes, in addition to the single-family houses on both sides of the street, two-level and three-level town houses and a three-story multi-family building that is part of Leisure World Mutual 19. Baileys Lane is a "U" shaped road that intersects twice with Norbeck Road. A cul-de-sac in the southern portion of Baileys Lane contains town houses in the PD-3 Zone.

9. The area immediately adjacent to the southern and western property lines of the Subject Property is classified in the Planned Retirement Community Zone (PRC) and is part of the age restricted Leisure World Community. A Leisure World maintenance building, gardens and a vacant PEPCO site and PEPCO right-of-way abut the Subject Property to the south and west. Adjacent to the PEPCO parcel on the west side, within Leisure World are the Mutual 16 single-family attached villas. Our Lady of Grace Catholic Church is located north of Mutual 16. This parcel includes a church, parish house and residence along with accompanying parking facilities. The church has access from Norbeck Boulevard, located along its western boundary. Norbeck Boulevard is a two-lane roadway providing access to the church and a gate controlled secondary access to Leisure World. Leisure World's primary access roadways are located on both Georgia Avenue and Connecticut Avenue. At dusk, a gate closes the portion of Norbeck Boulevard that is within the property line of Leisure World.

10. The northern property line of the Subject Property abuts Norbeck Road. North across Norbeck Road is a church, several single-family homes in the RE-2 Zone and East Norbeck Park.

11. The Applicants' land planner described the surrounding area or neighborhood as bounded on the north by the properties facing Norbeck Road, on the east by the eastern leg of Baileys Lane and on the south and west by the outer boundaries of Leisure World Mutual 16.

12. The Subject Property is within the planning area of the Aspen Hill and Vicinity Master Plan, (Exhibit No. 11 and S-2460 Exhibit No. 11(c)), which was approved and adopted in April, 1994. The Subject Property is one of several sites identified in the Master Plan as "Significant Parcel 5". The Master Plan describes the area within which the Subject Property is located as "generally bordered to the west and south by Leisure World and to the east by a single family detached subdivision." (S-2460 Exhibit No. 11(c), pg. 42). The Master Plan notes at page 42 that the area had been proposed for R-200 zoning by the prior master plan and that the current plan recommends the RE-2/TDR Zone for the remaining RE-2 properties to provide a consistent land use pattern

in the area. The Subject Property was zoned RE-2/TDR by Sectional Map Amendment following adoption of the Master Plan on April 20, 1994.

13. The Master Plan identifies the Subject Property as suitable for an alternative to TDR development to provide an affordable elderly housing project. The Master Plan states that it would be appropriate for the Subject Property to be included in an expansion of Leisure World. (Exhibit No. 11(c), pg. 42).

14. The Master Plan recommends that Norbeck Road east of Georgia Avenue be reconstructed as a four lane divided highway with controlled access and service roads where feasible. (S-2460 Exhibit No. 11(c), pg. 9).

15. The Master Plan identifies the availability of affordable rental housing as a “strong housing need” in the county (S-2460 Exhibit No. 11(c), pgs. 188-189). The Master Plan further provides that attention should be given to ensure that both renters and owners have affordable housing choices. (Page 188). The Master Plan “supports locations of housing for the elderly such that residents can easily access community facilities and services.” (Page 189). The Master Plan also encourages projects that incorporate design features that increase the safety and security of the physical environment of residences for the elderly. (Exhibit No. 11(c), pg. 189).

16. The Master Plan includes guidelines for Special Exceptions intended to address the issues of scale and use compatibility. (S-2460 Exhibit No. 11(c), pgs. 79-81). Those guidelines recommend that this Board consider the following issues: avoidance of over concentration of special exception and other non residential uses along major transportation corridors; protection of major transportation corridors and residential communities from incompatible design of special exception uses by avoiding front yard parking or allowing it only if it can be adequately landscaped and screened and by giving close scrutiny to enhancing the screening and buffering viewed from abutting residential areas and along major highways. (Exhibit No. 11(c), pg. 80).

17. Application No. S-2459 originally proposed the construction of a 3 story/4-story flat walled “H” shaped building (the “original building”) setback 45 feet from the east and 44.2 feet from the west property lines. The original building was to be setback 139.2 feet from the rear (south) and 295.2 feet from the master plan right of way line for Norbeck Road to the north. The original building contained 130 units in 147,275 square feet of space. It was three stories in the front and followed the natural sloping grade of the site so that the rear half of each side wing and the rear of the center wing were four stories in height. The measured height of the building was, at its highest, 44 feet high. (Exhibit Nos. 5(a), (c), (e), (g), and (i)).

18. The initially submitted Site Plan depicted a single entrance and exit at Norbeck Road, located near the eastern edge of the site. (Exhibit No. 4(a)). It proposed a landscaped berm ranging up to 8 feet in height along Norbeck Road and the retention of existing trees along the east and west property lines.

19. The initial Site Plan depicted 77 parking spaces to serve the independent living facility in addition to the 12 parking spaces provided for the assisted living facility. In order to develop with only 77 off street parking spaces, a waiver is required from the design standards applicable to parking facilities under Division E of the Zoning Ordinance. That waiver requires a separate hearing and decision by the County’s Department of Permitting Services. The Applicant testified that it had surveyed other

similar communities it operated and concluded that the maximum number of parking spaces actually needed for an independent living facility equated to 0.56 spaces per dwelling unit. The Applicant's site design was based on a parking facility that would accommodate 77 spaces for 130 two-bedroom rental units in addition to the 12 spaces required for the assisted living facility.

20. The initial Site Plan included passive recreational areas and pathways. The pathway system was improved in a subsequent amendment to provide a continuous and connected pathway system wide enough to accommodate wheelchair access for residents. (Exhibit No. 206). The proposed storm water management concept plan to provide both quantity and quality control on site was submitted to and approved by the Department of Permitting Services. (Exhibit No. 94). Ms. Afsi Niko testified on behalf of the Applicant as an expert witness in engineering that the proposed storm water management facility was sized to exceed county requirements and that the proposed development would not exacerbate flooding that was described as an existing condition on a neighboring property owned by Mr. and Mrs. Bailey.

21. The evidence of record includes interior floor plans for the original building that did not significantly change in the final amendment. Those plans detail the size, design and location of the two-bedroom dwelling units and the library, recreational, arts and crafts, media entertainment center, computer room, and health and personal care facilities as well as the "country store" that were included in the original building and were retained in the amended plan. (Exhibit Nos. 5(a)-(j) and Exhibit Nos. 199 (c)-(g)).

22. The Applicants' first amendment to the Site Plan (Exhibit No. 37(d)) responded to the recommendations of the Technical Staff and Planning Board and relocated the entrance to the east as recommended by the Technical Staff, revised the design of the independent living residence to articulate the east and west wings of that building by setting the wings further back and bumping out the center where the central core connects with each side wing creating an angular articulated design, increasing the side yard set backs and reducing the visible mass of the building. The side yard setbacks were increased to 48 feet on the west and 56.6 feet on the east. In all other respects the elements of the original building's interior features and exterior site elements were retained. (Exhibit No. 37(d)).

23. The next amendments to the special exception site plan revised the landscaping to provide additional understory plantings along the eastern edge of the conservation area as recommended by the Technical Staff. It also angled the area set aside for the sewer line connection out to Baileys Lane eliminating a straight-line view into the property over the part of the easement area that would be cleared to install the sewer line.

24. The same amendment also revised the lighting plan by relocating certain fixtures in the parking area. An explanation of the lighting plan revision was omitted by the applicant resulting in a delay in the hearing process. Prior to the next hearing at which lighting was considered, a further revision to the lighting plan prepared by Ken Roth was submitted. It reduced the height and location of the poles to 14 feet, and changed the lights to high-pressure sodium. (Exhibit No. 185). During the public hearing, further lighting revisions were discussed and testimony was received from Mr. Cary Lamari and the Applicants' witness culminating in the revised lighting plan depicted on Exhibit Nos. 240 (b) and (c). That Lighting Plan was prepared by Mr. Roth following the hearing to reflect what had been agreed to between the Applicant and the Opposition Witnesses.

It provides for the use of a vertical lamp with an upright shield. The pole height is reduced to 10 feet and the wattage of the bulb is stated to be not in excess of 100 watts. Mr. Lamari testified that the revised lighting plan was acceptable to the opponents. The Applicants submitted photometric studies that demonstrated that the revised lighting system would not produce excessive glare or illumination. (Exhibit No. 186).

25. The final amendment revised the access to the Subject Property. It eliminated left turns out on to Norbeck Road by creating a one-way westbound driveway to Norbeck Boulevard. The westbound driveway will enable traffic heading toward Georgia Avenue to exit on to Norbeck Road at Norbeck Boulevard, a traffic light controlled intersection. This amendment also widened the main driveway to Norbeck Road to 20 feet each for both inbound and outbound traffic and it realigned the outbound lane to direct headlights away from a confronting house across Norbeck Road. The revised plan also proposed the installation of a “pork chop” shaped island to direct all outbound traffic to the east and prevent left turns on to Norbeck Road.

26. The final amendment also reduced the height of the independent living residence to three stories and lowered the entire building 8.6 feet by re-grading the site. In order to lower the building, the Applicant proposed extending the northwest, southwest and southeast wings each 27.7 feet. The Board accepted the re-grading of the site as per Exhibit No. 198(f) and conditioned its approval on both the reduction in height by re-grading and the construction of a three-story building without the proposed extension of the wings.

27. The Applicants’ traffic engineer analyzed the total traffic impact from both special exception applications using trip generation rates established by the Institute of Traffic Engineers (ITE) as required by the M-NCPPC transportation planning staff. Based on the ITE rates, the proposals will generate a total of 17 peak hour trips in the morning and 16 in the evening. During the morning, 10 of those trips will enter the site and 7 will exit. During the evening, 9 trips will enter and 7 will exit the site. Mr. Guckert testified that 2/3 of the site generated traffic will be oriented to and from the west and 1/3 to and from the east. Mr. Guckert’s Report (Exhibit No. 109) estimates that approximately 11 morning and evening peak hour trips to the west would be added by the proposed development of the site and that approximately 6 peak hour trips would be added to the east of the site access driveway. (Exhibit No. 109(b), pg. 3). Mr. Guckert concluded that the proposals were low traffic generators during peak hours and would have no measurable impact on traffic volumes or traffic conditions along the surrounding area road system.

28. The Applicants’ traffic engineer, Mr. Guckert, testified that traffic capacity measured under the Policy Area Review criteria was not an issue because affordable, independent elderly housing qualifies for the Special Ceiling Allocation for affordable housing in the Annual Growth Policy. He also pointed out in his testimony that the Planning Board would determine whether Local Area Transportation Review criteria were met in terms of adequate public facilities when the Applicant submitted its request to revise the previously adopted condition of approval of Preliminary Plan of Subdivision 1-97023 that limited development to the now expired Manor Health Care Special Exception.

29. The Traffic Group also conducted line of sight analysis and “gap studies”, contained in its report (Exhibit No. 109), to determine whether the proposed main driveway to Norbeck Road provided safe turning movements and ingress and egress.

Mr. Guckert testified that access to the Subject Property was safe with the proposed stacking lane on Norbeck Road for left turns into the Subject Property and the acceleration and deceleration lanes for eastbound traffic that are required by SHA. He also testified that there was adequate sight distance, following the removal of certain trees within the right of way, for safe access, even for older drivers with slower response times. (Exhibit No. 109(b)). The final amendment to the Special Exception site plan eliminated left turns out from the main access driveway by redirecting all westbound traffic to Norbeck Boulevard. (Exhibit 198(f)). Mr. Guckert stated that the change increased the length of gaps available for eastbound traffic and that the proposed driveway was a safer route for westbound traffic and would not interfere with the use of Norbeck Boulevard by Leisure World residents and visitors. Mr. Guckert further testified that Norbeck Road was not considered a high accident roadway by the SHA and that he had analyzed the accident data from SHA included in Exhibit No. 109 supporting the conclusion that the overall accident rate for Norbeck Road is lower than the statewide average.

30. A Need Study was prepared by ZA Consulting (Exhibit No. 19) under the supervision of Joseph Howell who testified twice during the public hearings. Mr. Howell and the Study differentiated between market rate and low-income elderly housing on the one hand and tax credit financed projects being proposed under Special Exception S-2459 that provide affordable elderly housing to serve an age group whose age was in the low to mid 70's. (Exhibit No. 19, pg.18). Mr. Howell testified that the proposed facility was targeted to the moderate-income households seeking rental housing with an annual income range from \$17,500 to \$35,000. Mr. Howell provided an analysis of existing and approved independent living units in the County, comparing services provided and costs and concluded that a county wide need exists for the proposed elderly housing project taking into account the size of the proposed units, the services to be provided, the location of the Subject Property in the Aspen Hill area and the existing and approved competitive facilities. Mr. Howell concluded the moderate-income elderly group is the most underserved elderly population in Montgomery County.

31. Philip Perrine testified that the Subject Property has adequate accessibility to shopping centers, one of which is located ½ mile to the south on Georgia Avenue at the entrance to Leisure World and another located on Bel Pre Road. He added that the Subject Property is in close proximity to public parks, medical office facilities and restaurants and is within five miles of Montgomery General Hospital. He further testified that the property's location on a major highway provides transportation opportunities to travel to nearby shopping centers by car, taxi and van service. The Applicants' representative, Jeffery C. Kirby, testified that Montgomery County would work with the County to provide additional Ride-On bus service to the property. (Exhibit No. 246). He also agreed that the applicant would provide contract van service to take residents to Leisure World. He testified that the resident manger would serve as a transportation coordinator to organize car pools, arrange for taxi service fare discounts through a County program and coordinate the availability of a contract van service to take residents to shopping and medical services on an as needed basis.

32. Jeffrey C. Kirby and Wes Guckert both testified that the number of parking spaces required for the independent elderly housing residence exceeded the number of spaces reasonably necessary to accommodate the residents, staff and visitors to that facility. The Applicant's evidence was based on studies of facilities similar to that proposed which are located both in Montgomery County and Prince Georges County. (Exhibit No. 109). On the basis of the studies, the Applicant has proposed to limit the number of off

street parking spaces for the independent elderly residence to 77. The applicant has filed a request for a Parking Waiver pursuant to Section 59-E-4.5 and Division E of the Zoning Ordinance. (Exhibit Nos. 13 & 14). A public hearing on that Waiver is scheduled for July 20, 2001. The number of parking spaces remained at 77 when the Site Plan was amended to reduce the density to 127 units and is required to remain the same for the 110 units approved by this decision.

Case Number S-2460

1. Victory Housing, Inc., the Applicant, in Case No. S-2460, presented exhibits and oral testimony detailing the operations, staffing and services to be provided in the assisted living facility that it proposes to construct and operate on the Subject Property in accordance with the standards for Domiciliary Care Homes contained in Section 59-G-2.37 of the Zoning Ordinance.
2. At least 50% of the beds in the assisted living facility will be affordable by persons of moderate income.
3. The assisted living facility will be housed in a two-story brick and siding building with a gabled roof of residential design. It will be constructed of building materials designed to maintain an interior ambient noise level at or below 45dba including resilient channels and triple glazed windows. The building will have residential style windows. Both the building and outside patio areas are set back 180.5 feet from Norbeck Road and 35.1 feet from the west property line. (Exhibit No. 198(f)).
4. The assisted living facility will accommodate thirty (30) residents on two floors with two apartments for resident staff. The building will include a sitting room, assisted bathing room, living room and dining room. A beauty salon and wellness center will be located on the first floor. Three meals a day will be served. Laundry, housekeeping services as well as medication management and emergency assistance will be available for residents. There will be a maximum of twelve (12) employees working in shifts to provide twenty-four hour services. Two apartments will provide living accommodations for resident staff. Twelve parking spaces will serve the assisted living facility, its staff and visitors in accordance with the requirements of Division E of the Zoning Ordinance. Visiting hours will be generally from 9:00 A.M. to 9:00 P.M.
5. The assisted living facility will be located on a discreet two-acre portion of the Subject Property and share the access, walking paths, parking facilities and other exterior amenities with the independent elderly housing residence pursuant to reciprocal easements with Hampshire Village Associates Limited Partnership.
6. The Applicants' traffic consultant, Wes Guckert, testified that the assisted living facility was classified as a job related use under the AGP and Policy Area Review capacity does exist for the trips generated by this use. James Brown, President of Victory Housing, Inc., testified that the shift changes for employees would occur outside of the A.M. peak hours of 7:00 A.M. to 9:00 A.M. and the P.M. peak hours of 4:00 P.M. to 6:00 P.M. thereby further reducing the impact of this special exception use on the surrounding road network. Total site generated traffic was analyzed in connection with Case No. S-2459 and is discussed above.

The Planning Board and Technical Staff Recommendations

1. The Montgomery County Planning Board (the "Planning Board") in its letter dated December 21, 2000, and the Technical Staff in its reports dated December 1, 2000, (Exhibit Nos. 50, 51 and 52) respectively recommended approval of the two special exception applications, subject to conditions. The M-NCPPC Technical Staff evaluated the proposals for compliance with the general and specific standards required by the zoning ordinance for approval. The Technical Staff analysis was conducted under the standards for evaluation pertaining to inherent and non-inherent adverse impacts as required by Section 59-G-1.21 of the Zoning Ordinance.

2. The Technical Staff recommended approval of Special Exception S-2459 subject to the following conditions:

Compatibility

1. Reduce the building height, and increase the setback and green buffer adjacent to the existing houses to establish compatibility as follows:
 - a) maximum height of the building at the central wing to be no more than three stories;
 - b) maximum height of the side wings nearest the side lot lines to be no more than two stories in the front half and three stories in the rear of the building; and
 - c) a minimum of 50 feet of green buffer between the building and the side lot lines.
2. Either limit the development to no more than 35 units of independent elderly housing and eight units of assisted living units, or provide an effective on-site transportation program to reduce vehicle trips so that a greater number of units will pass Policy Area Review under the *de minimis* impacts provision.
3. Provide, prior to the decision by the Board of Appeals, an accident analysis indicating that the accident history on Norbeck Road (MD 28) in the vicinity of the proposed site access does not indicate that a safety hazard exists, and that ingress and egress to and from the special exceptions will not create a safety hazard as determined by Transportation Planning staff's review.
4. Coordinate with Maryland State Highway Administration regarding site access approval on Norbeck Road (MD 28).
5. Approval of a final Forest Conservation Plan prior to release of sediment and erosion control, or building permits, as appropriate.

Environment

6. Compliance with the Department of Permitting Services requirements for stormwater management.

Miscellaneous

7. At least 20 percent of independent elderly housing units must qualify as Moderately Priced Dwelling Units (MPDU's).
8. Approval of a Preliminary Plan by the Montgomery County Planning Board.
9. Approval of the Technical Staff of a landscaping and lighting plan including, but not limited to:
 - a) lights directed away from existing houses;
 - b) a green buffer adjacent to existing houses; and
 - c) trees along the entrance driveway, and Norbeck Road.
10. Approval of a waiver of the parking requirements by the Department of Permitting Services. If the parking waiver is not approved, the Applicant must obtain approval of a revised landscaping and lighting plan by the technical staff.
11. For the parking facility associated with this project, compliance with standards and guidelines set out in the Zoning Ordinance for facilities in residential zones.

The Technical Staff recommendation that development be limited unless an on-site transportation program was provided did not take into consideration the fact that the special exception for Housing and Related Facilities for the elderly is not subject to Policy Area Review in accordance with the AGP affordable housing policy. (Exhibit No. 50). That policy negated this particular Technical Staff recommendation. In all other respects the Technical Staff found that the S-2459 Special Exception, as conditioned, satisfied the general and specific standards for approval.

3. The Technical Staff also evaluated Case No. S-2460 and recommended that that Special Exception be approved subject to the following conditions:

1. The proposed assisted living portion of the property is limited to a maximum of 30 units subject to provisions of an effective on-site transportation program that will reduce vehicle trips so that the project can pass Policy Area Review under the de minimus impacts provision. Without trip reduction measures, the approval for both components of the project would be limited to no more than 35 units of independent elderly housing and 8 units of assisted living on the site.
2. Provide, prior to decision by the Board of Appeals, an accident analysis indicating that the accident history on Norbeck Road (MD 28) in the vicinity of the proposed site access does not indicate that a safety hazard exists, and that ingress and egress to and from the site will not create a safety hazard as determined by Transportation Planning Staff's review.
3. Coordinate with Maryland State Highway Administration regarding site access approval on Norbeck Road (MD 28).

4. At least 20 percent of independent elderly housing units must qualify as Moderately Priced Dwelling Units (MPDU's).
5. Approval of a Preliminary Plan by the Montgomery County Planning Board.
6. Approval of a final Forest Conservation Plan prior to release of sediment and erosion control or building permits, as appropriate.
7. Compliance with the Department of Permitting Services requirements for stormwater management.
8. The applicant must submit a final landscaping and lighting plan prior to the issuance of a building permit.

(Case S-2460, Exhibit 29). The Technical Staff recommendation that the assisted living facility be reduced in density due to the same Policy Area capacity constraints under the AGP that were of concern in its review of Case No. S-2459 did not take into account that Domiciliary Care Homes are appropriately analyzed for traffic capacity purposes as producing "job" trips not "residential" trips under the AGP. The Aspen Hill Policy Area has additional transportation capacity for jobs rendering the Staff's recommended condition unnecessary.

4. The Technical Staff in a report dated December 11, 2000, provided additional information regarding its accident data analysis. (Exhibit No. 40). The staff found, based on its independent analysis, that turning movement accidents were below statewide averages for roadways similar to Norbeck Road and concluded that the proposal would not create a safety hazard. (Exhibit No. 40).

5. The Planning Board recommended approval of both applications in its letter to this Board dated December 21, 2000. (Exhibit No. 52 and S-2460, Exhibit No. 42). The Planning Board expressed its view of the importance of the project especially since S-2459 will be all affordable independent rental units for the elderly. The Planning Board stated that it was persuaded by the Transportation Planning Staff's report concerning traffic safety and concluded that the proposed entrance would not create a safety hazard. Regarding compatibility, the Planning Board acknowledged that the buildings for the uses proposed would always be larger than a typical single-family residence in a single-family zone. The Planning Board then expressed its opinion that the Applicant had addressed the issue of compatibility by modifying the design and increasing the setback of the side wings of the independent living residence. The Planning Board recommended a condition requiring greater articulation in the façade design to further enhance the appearance of the building.

6. The Technical Staff, at the request of this Board, reviewed the final amended plan submitted by the Applicant in Case No. S-2459 and issued a Supplemental Report (Exhibit No. 247) that was presented to the Planning Board on June 21, 2001. The Technical Staff recommended that the revised access plan with the one-way westbound driveway to Norbeck Boulevard be approved. The Staff concluded that the revised access proposal resulted in a safer alternative to left turns out on to Norbeck Road. The Staff recommended the installation of control signs, markings and channalization islands at both the site entrance and at Norbeck Boulevard. Coordination with the SHA

and Leisure World also recommended by the Staff has already occurred according to the testimony of the Applicant.

7. The Technical Staff did not recommend approval of the amendment insofar as it proposed to increase the length of the side wings of the building 27.7 feet by extending three of the four side wing sections in order to lower the overall height of the structure. The Technical Staff again recommended approval but proposed that the building design be modified to retain the three-story/four-story scheme previously approved by the Planning Board. (Exhibit No. 247). In addition the Technical Staff recommended that the proposed westbound driveway be approved subject to conditions requiring SHA approval and coordination with the Leisure World management and Tenant's Association.

8. The Planning Board, by a unanimous vote of the four members participating, approved the Technical Staff recommendations. (Exhibit No. 251).

Findings of the Board

Based on the Applicant's binding testimony, the evidence of record and the exhibits presented at the public hearings the Board concludes that the requested Special Exception Case Nos. S-2459 and S-2460 can be granted subject to the conditions enumerated below.

1. The Board adopts the definition of the neighborhood as proffered by the Applicant. (Evidence presented, paragraph 11.)
2. The Board has evaluated the evidence of record and, as to Case No. S-2459, finds that there is a need for the proposed facility to serve the existing population of the County. The Board further finds that the evaluation of compatibility requires it to consider all of the surrounding uses and development and finds that Leisure World is a part of the applicable area for analysis purposes.
3. The Board finds that the revised access plan submitted by the Applicant resolves the concerns expressed about safety and that overall the ingress and egress to the site will function in a safe and efficient manner.
4. The Board finds that there are no unique characteristics of the site that would amount to a non-inherent adverse characteristic that would render the site not suitable for the proposed uses.
5. The Board further finds that there are no non-inherent adverse impacts from these two proposals.
6. The Board finds that the independent residence building as proposed by the Amended Special Exception Site Plan is too large as a result of the extension of the side wings on both the east and west sides. The Board further finds that, in order to assure compatibility and harmony, that mass of the building must be reduced by eliminating the three 27.7 foot extensions.

7. The Board finds that the density must be limited to 110 rental units in order for those units to be accommodated in the building with its reduced dimensions. The Board originally approved 109 units based on building size. The Board was subsequently notified by the Applicant's counsel (Exhibit No. 254) that the architect had calculated that 110 units could physically be accommodated within the approved building without the wing extensions. Following a request by the Applicants' counsel prior to the approval of this Opinion, the Board voted to reconsider at its Worksession on July 24, 2001, and thereafter the Board voted to allow the additional unit.
8. With regard to Case No. S-2460, the Board agrees with the Planning Board and the Applicant and notes that although there was considerable opposition to Case No. S-2459 there was no substantial evidence presented in opposition to Case No. S-2460.
9. The Board finds that both proposed uses are consistent with the recommendations in the approved and adopted Master Plan for Aspen Hill and Vicinity and with the General Plan.

General Conditions

The General Conditions contained in Section 59-G-1.21 of the Zoning Ordinance provide that a special exception may be granted only after the Board makes certain specific findings.

Section 59-G-1.21 of the Zoning Ordinance provides that a special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:

- (1) *Is a permissible special exception in the zone.*

The Board finds that both uses are permitted Special Exception uses in the RE-2/TDR Zone.

- (2) *Complies with the standards and requirements set forth for the use in Division 59-G-2.*

The Board finds that the Housing and Related Facilities for the Elderly or Handicapped use complies with the standards and requirements of Section 59-G-2.35 and that the Domiciliary Care Home complies with the standards and requirements of Section 59-G-2.37 as more particularly detailed below.

- (3) *Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the commission. Any decision to grant or deny a special exception must be consistent with any recommendation in an approved and adopted master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location*

would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.

The Board finds that both proposed uses are consistent with the recommendations in the approved and adopted Master Plan for Aspen Hill and Vicinity and with the General Plan. Both the Planning Board and the Board's Technical Staff found the proposed Special Exception uses to be consistent with the General Plan and the 1994 Aspen Hill and Vicinity Master Plan.

- (4) *Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions and number of similar uses.*

The Board finds that the use proposed by Case No. S-2459, when reduced in size and density to a three story building with side wings that are the same length as that proposed for the three story/four story modified "H" structure, a density of 110 dwelling units and a reduction in height by grading, will be in harmony with the general character of the neighborhood considering all of the factors detailed in Condition (4). The Board finds that the terms "bulk" and "footprint" in the context of this application relate to the relationship between the building and the site on which it is located as compared with surrounding properties. The Board concludes that, as proposed, the bulk of the building depicted on the amended plan is too large. Harmony is achieved by reducing the height of the building to three-stories and re-grading the site without extending the length of the "wings." The Board further finds that compatibility does not require that buildings in a community be of equal size. In finding compatibility, the Board has considered the proposed project with its extensive setbacks, its frontage on Norbeck Road, and the scale which fits into the community, a community that includes Leisure World and a ten-story apartment building that is clearly visible from Norbeck Road.

The Board also finds that the Building that is the subject of Case No. S-2460 is a two-story structure with ample setbacks and residential design. It is in harmony with the neighborhood and meets all of the standards contained in Condition (4) of Section 59-G-1.21 of the Zoning Ordinance.

The Board finds as a fact that the site generated traffic and the ingress and egress to the Subject Property are typical of such uses and the traffic impact on the surrounding roads, including Norbeck Road will be harmonious with the general character of the surrounding area.

- (5) *Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

The Board finds that the use proposed in Case No. S-2459 will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general at the site of the Subject Property. The extensive setbacks and modified landscaping and under-story plantings required by the Applicants' plan effectively screen the proposed building and parking facility from adjacent land uses.

The height of the berms along Norbeck Road, at ten feet at the top using the same range in height as that proposed together with the setbacks and reduced height and mass of the independent living facility, protect surrounding properties and the neighborhood. Accordingly the Board finds that the proposed use complies with the standards set out in Condition (5).

- (6) *Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

The Board finds that neither of the proposed special exception uses will cause any objectionable noise. The parking facility is setback and screened from adjoining properties. The property closest to the parking facility is a church. There are no vibrations, fumes, odors, or dust that would result from the proposed use and the record is clear that any such impacts would be limited to those inherently associated with the proposed uses. There will be no objectionable illumination or glare as a result of the proposed uses. The lighted parking facilities and security lighting depicted on the lighting plan (Exhibit Nos. 240(b) and (c)) are an inherent effect of the proposed uses and are not an adverse impact as now proposed. The physical activity at the site is that which is inherently associated with senior housing and assisted living facilities. There is no evidence of any activities that would adversely affect surrounding properties.

- (7) *Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.*

The Board finds that the evidence of record reveals that there is one operational special exception, Case No. S-2203, a golf driving range, in the immediate area of the Subject Property and it is located at the Norbeck Road and Georgia Avenue intersection. There are no proposed special exceptions in the area. The addition of the proposed uses which provide residential accommodations for the elderly and are located in a two story residential style building and a three story multi-family structure, do not alter the predominately residential character of the Baileys Lane area, the area north of Norbeck Road or Leisure World. The Master Plan specifically identifies the Subject Property as a suitable location for affordable elderly housing. (S-2460, Exhibit No. 11(c), page 42). The Board, therefore, finds as a fact that the proposals are consistent with the recommendations of the Aspen Hill Master Plan and therefore would not alter the nature of the surrounding area.

- (8) *Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

The Board finds that the proposed Special Exceptions will have no non-inherent adverse affect on the health, safety, security, morals or general welfare of residents,

visitors or workers in the area of the Subject Property. Both proposed uses serve the public interest and their establishment is in accordance with the general welfare. The access plan for the subject property assures that the health, safety and security of residents, workers and visitors is protected. The design of the proposals also protects those living, working and visiting the site. The Board finds, as a fact that Norbeck Road is not a high accident roadway and that the site generated traffic will not adversely affect the health, safety and general welfare of the surrounding area, its residents, workers and visitors.

- (9) *Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.*

The Board finds that neither proposal will have any effect on schools. Public water and sewer serve the Subject Property and there is adequate transmission and treatment capacity to accommodate the proposed Special Exception uses. The proposed storm drainage system has been approved in concept and will provide adequate storm water management for both Special Exception uses and the driveway to Norbeck Boulevard. Both police and fire protection services are adequate with a fire station located near Leisure World and on Georgia Avenue at Emory Church Road. Police protection is adequate. The adequacy of public facilities will be determined by the Planning Board in its consideration of an application to modify a condition of Preliminary Plan approval to substitute these approved Special Exceptions for the previously approved but expired Special Exception granted to Manor Healthcare Corporation.

- (i) *If the special exception use requires approval of a preliminary plan of subdivision the adequacy of public facilities must be determined by the Planning Board at the time of subdivision review. In that case, subdivision approval must be included as a condition of the special exception.*

The Applicants are required to secure approval of an amendment to the conditions of approval of Preliminary Plan 1-97023 and to substitute the approved special exceptions conservation easements for that applicable to the expired Special Exception Case No. S-2237.

- (ii) *With regard to findings relating to public roads, the Board, the Hearing Examiner, or the District Council, as the case may be, must further determine that the proposal will have no detrimental effect on the safety of vehicular or pedestrian traffic.*

The Board determines that the proposed Special Exceptions will have no detrimental effect on the safety of vehicular or pedestrian traffic. The Board is cognizant of the perception of some who testified regarding accidents along Norbeck Road. The Board is persuaded by the data from the State Highway Administration submitted by the Applicants. The SHA data supports the conclusion that Norbeck Road is not a high accident roadway. The Board finds, based on the SHA data that the introduction of a new right turn only driveway to serve the proposed uses will not create a safety hazard. The more difficult left turns will be made at a light at the Norbeck Boulevard and Norbeck Road intersection. Although there are presently no sidewalks along Norbeck Road, the Board finds that the proposals will have no detrimental effect on pedestrian traffic.

Section 59-G-2.35 “Housing and Related Facilities for Elderly or Handicapped Persons”

Pursuant to Section 59-G-2.35 of the Zoning Ordinance a special exception for Housing and Related Facilities for Elderly or Handicapped Persons may be granted subject to the following provisions:

(a) Prerequisites for granting:

(1) A minimum of 15 percent of the dwelling units is permanently reserved for households of very low income, or 20 percent for households of low income, or 30 percent for households of MPDU income. If units are reserved for households of more than one of the specified income levels, the minimum percentage must be determined by agreement with the Department of Housing and Community Affairs in accord with Executive regulations. Income levels are defined as follows:

(A) "MPDU income" is the income limit determined by the Department of Housing and Community Affairs in the administration of the moderately priced dwelling unit (MPDU) program, as prescribed by Chapter 25A.

(B) "Low income" is income at or below 60 percent of the area median income adjusted for household size.

(C) "Very low income" is income at or below 50 percent of the area median income adjusted for household size.

(D) "Area median income" is as determined annually by the U.S. Department of Housing and Urban Development.

The Board finds that all of the dwelling units in the independent living residence will be reserved for households at or below 60% of the area medium income adjusted for household size.

(2) Taking into account the size of the units, the services to be provided, the income levels to be served, and the location of the site, there is a need for such use because:

(A) There is an insufficient amount of such housing and facilities to serve the existing population of the County, and

(B) The need for such housing and facilities cannot be met by development in accordance with development standards not requiring a special exception.

In making this finding, the Board must consider demographic data, including projections and analyses provided by the Planning Board and County Government, as well as evidence provided by parties to the case. Such data will be evaluated by the technical staff of the Planning Board.

The Board finds that there is a need for the proposed Special Exception for housing and related facilities for the elderly. In reaching this conclusion the Board has considered and given substantial weight to the testimony of Sally Roman of the Technical Staff who independently analyzed the projections and demographic data and the data submitted by the Applicant. The Board finds that the income group to be served by this Special Exception is presently under served. The proposed use will meet an existing countywide need.

- (3) *The proposed use will not produce adverse effects on the use or development of the surrounding area because of noise, traffic, type of physical activity, height or bulk of buildings, density, or any other reason.*

The two Special Exception uses will not produce non-inherent adverse effects on the use or development of the surrounding area because the uses do not generate significant noise and reflect low levels of activity that are typical of senior housing communities. The low level of site generated traffic will not increase the level of traffic on the surrounding road network sufficiently to have a perceptible impact and the provision of turning and acceleration, deceleration lanes at the main entrance and the westbound driveway to Norbeck Boulevard result in a safe and efficient transportation plan for the site generated traffic. The height and bulk of the building when constructed in accordance with this Opinion will not produce adverse effects on the use or development of the surrounding area. Further, based on the evidence of record, the Board finds that there are no other reasons why this proposal would produce non-inherent adverse impacts.

- (4) *The site or the proposed facility has adequate accessibility to public transportation, medical service, shopping areas, recreational and other community services frequently desired by elderly or handicapped persons.*

The Board finds that the proposed facility located on a major highway within a half-mile of a shopping center and medical offices does have adequate access to those facilities and to recreational and other community services desired by elderly persons. Access to those facilities by car, a contract van service, carpools arranged by the resident manager, and taxi service for which discount fares are available through County programs are sufficient to assure adequate access.

- (5) *The site or the proposed facility is reasonably well protected from excessive noise, air pollution, and other harmful physical influences.*

The Board finds that the Subject Property is reasonably well protected from excessive noise, air pollution and other physical influences. There is no evidence that there is in fact excessive noise or air pollution that would affect the site. The Board finds that the typical highway traffic noise is adequately mitigated by the extensive setbacks from Norbeck Road, the location of the parking as an intercepting non-habitable use and the landscaped berms along Norbeck Road that will be raised to ten feet. There are no other harmful influences affecting the site.

- (b) *Occupancy of a dwelling unit is restricted to the following:*

- (1) *An elderly or handicapped person, as defined in Section 59-A-2.1;*
- (2) *The spouse of an elderly or handicapped resident, regardless of age or handicap;*
- (3) *A resident care-giver, if needed to assist an elderly or handicapped resident; or*
- (4) *In a development designed primarily for handicapped rather than elderly persons, the parent, daughter, son, sister or brother of a handicapped resident, regardless of age or handicap.*

Additional Occupancy Provisions are:

- (5) *Age restrictions must comply with at least one type of exemption for housing for older persons from the familial status requirements of the federal "Fair Housing Act," Title VIII of the Civil Rights Act of 1968, and subsequent amendments thereto. (In that Act, "familial status" refers to discrimination against families with children.)*
- (6) *Resident staff necessary for operation of the facility is also allowed to live on site.*

The Board finds that the proposed facility will be occupied by persons defined as "elderly persons" by Section 59-A-2.1 of the Zoning Ordinance and such person's spouse and/or caregiver. The Board further finds that the age restriction complies with the federal Fair Housing Act. The Board also finds that there are provisions in the proposed building for resident staff necessary for operation of the facility to live on site.

- (c) *Development standards, other than density, in residential zones where allowed by special exception, except R-30, R-20, R-10 and R-H:*
 - (1) *Minimum net lot area: One and one-half acres, but not less than the minimum net lot area specified by the relevant zone.*

The proposed use will be located on a net site area containing 5.73 acres of the 8.27 acre Subject Property, more than the minimum area requirement of the RE-2/TDR Zone and greater than the one and one-half area minimum requirement for elderly housing.

- (2) *Minimum setbacks:*
 - (A) *From street: 50 feet. Except for an access driveway, this must be maintained as green area. However, if development does not exceed the height limit of the applicable one-family zone, the minimum setback specified by the zone applies.*
 - (B) *From side and rear lot lines: 25 feet or as specified by the relevant zone, whichever is greater.*

The Building as depicted on the Site Plan (Exhibit No. 198(f)) is set back a minimum of 56 feet and a maximum of 81 feet from the east property line, 50 feet to 81 feet from the west property line, 349 feet from Norbeck Road and 139 feet from the rear property line. (Exhibit Nos. 198(f) and 247). The Board finds that the setbacks are all at or greater than the minimum required.

- (3) *Maximum building height: 120 feet, provided the following height-to-setback ratio is achieved for heights above the maximum prescribed by the applicable zone:*
 - (A) *Rural Cluster, Rural, RE-2, RE-2C, RE-1, R-200, R-150 Zones: One foot of height is allowed for each one foot of setback from the side and rear lot lines, up to a height of 50 feet. Between 50 and 120 feet of height, one additional foot of height is allowed for each additional 2 feet of setback beyond the minimum side and rear yard setbacks prescribed by paragraph (2)(b), above.*

The height of the building is three stories in height. The Board finds the building to be in compliance with the height standard.

- (B) Not applicable
- (C) *The Board may approve a reduction in the setback requirement of Paragraph (3)(A) or (B) from a property line that abuts existing development constructed to a height of at least 50 feet or if the property possesses severe topography or other natural features that would permanently screen the building from neighboring one-family dwellings.*

No reduction in setbacks was requested.

- (4) *Maximum lot coverage: As specified by the relevant zone, provided the coverage complies with the setback requirements of Paragraphs (c)(2) and (3) of this section.*

The maximum lot coverage of the combined special exception uses is 14%, less than the maximum lot coverage specified for the RE-2/TDR Zone.

- (d) Not applicable.

- (e) *Maximum density:*

- (1) *In the Rural, Rural Cluster, RE-2, RE-2C, RE-1, R-200, R-150, R-90, R-60, R-40, RT-6, RT-8, RT-10, and RT-12.5 Zones, the number of units is governed by the overall size of the building as determined in accordance with the combined height and setback standards specified by Paragraphs (c)(2) and (3) of this section. Minimum unit size is governed by the minimum space and other relevant standards of Chapter 26, title "Housing Standards," of this Code, as amended.*

The Board conditions its approval on a maximum density of 110 rental units. The proposed 110 rental unit use meets the density requirements of the Zoning Ordinance and the proposed units meet or exceed the minimum housing standards of Chapter 26 of the Montgomery County Code 1994, as amended.

(2) Not applicable.

(f) *Parking and loading:*

(1) *Parking must be provided in accordance with the provisions of Section 59-E-3.7, title "Schedule of Requirements." The Board must require adequate scheduling and long-term continuation of any services for which parking credits are granted in accordance with Section 59-E-3.33(b) and may require additional parking for any facilities and services provided in accordance with Paragraph (g)(2) of this section, if they serve nonresident elderly or handicapped persons. When considering the need for additional parking, the Board may consider the availability of nearby public or private parking facilities.*

(2) *Loading areas to serve any facilities, such as kitchens or retail stores, requiring truck deliveries must be screened so as not to be visible from any lot line abutting or confronting land in a one-family residential zone.*

The off street parking facility will provide 77 parking spaces for the residents of the 110 units as well as staff and visitors. The Board finds that the 77 parking spaces, originally proposed to accommodate a 130-unit project are adequate for the 110 units, subject to compliance with the requirements and any conditions imposed by the Department of Permitting Services in the context of the Parking Waiver proceeding to be conducted by that Department. Should the Parking Waiver not be approved or not be approved as requested, the Applicant will be required to submit a revised special exception site plan to the Board.

(g) *Additional provisions:*

(1) *One or more of the following ancillary facilities and services may be included to serve the residents and possibly nonresident elderly or handicapped persons. The Board may restrict the availability of such services to nonresidents and specify the manner in which this is publicized.*

(A) *Provision for on-site meal service;*

(B) *Medical or therapy facilities or space for mobile medical or therapy services;*

(C) *Nursing care;*

(D) *Personal care services;*

(E) *Day care for elderly or handicapped persons;*

(F) *On-site facilities for recreation, hobbies or similar activities;*
or

(G) *Transportation to such off-site facilities and services as shopping, religious, community or recreational facilities, or medical services.*

- (2) *Retail facilities may be included to serve exclusively the residents of the building.*

The evidence of record reflects that the independent housing residence will include space for medical examination services, personal care services and on-site facilities for recreation, hobbies and similar activities. In addition, the Applicant in Case No. S-2459 testified that it would engage the services of a van service to supplement residents' personal transportation choices. Limited retail services available only to residents and operated by resident volunteers will be available for residents to purchase non-perishable essentials.

Section 59-G-2.37 "Nursing Home or Domiciliary Care Home"

A special exception for a Domiciliary Care Home may be granted subject to the following provisions:

- (a) *A nursing home of any size, or a domiciliary care home for more than 16 residents (for 16 residents or less see "Group home") may be allowed if the board can find as prerequisites that:*
 - (1) *the use will not adversely affect the present character or future development of the surrounding residential community due to bulk, traffic, noise, or number of residents*
 - (2) *the use will be housed in buildings architecturally compatible with other buildings in the surrounding neighborhood; and*
 - (3) *the use will be adequately protected from noise, air pollution, and other potential dangers to the residents.*
 - (4) *The Board of Appeals may approve separate living quarters, including a dwelling unit, for a resident staff member within a nursing home or domiciliary care home.*
- (b) Not applicable

The Board finds that the proposed 30 bed assisted living facility will not adversely affect the present character or future development of the community. The assisted living building is located on that part of the site that is closest to an existing institutional use, a church. It is set back more than 128 feet from Norbeck Road. The bulk of this two level residentially styled building is compatible with the surrounding area. The Board further finds that the few vehicle trips that will be generated by employees and visitors to this use will not have a perceptible impact on traffic conditions and the revised access to the Subject Property eliminates any concern for safety. The building itself will be constructed of materials that will ensure an inside dba level at or below 45 dba. There is no danger of air pollution or other potential dangers to the residents. The Board further finds that the proposed assisted living facility will have two separate living quarters for resident staff.

- (c) *The following requirements apply to all new nursing homes, additions to existing nursing homes where the total number of residents is 6 or more, and to all domiciliary care homes for more than 16 residents.*
- (1) *The minimum lot area in the rural zone must be 5 acres or 2,000 square feet per bed, whichever is greater.*
- (2) *In all other zones, the minimum lot area must be 2 acres or the following, whichever is greater:*
- (a) *In the RE-2, RE-2C, RE-1 and R-200 zones, 1,200 square feet for each bed.*
- (3) *Minimum side yards are those specified in the zone, but in no case less than 20 feet.*
- (4) *Maximum coverage, minimum lot frontage, minimum green area, minimum front and rear yards and maximum height, are as specified in the applicable zone.*

The Board finds that the proposed Special Exception complies with the applicable area requirement of two acres for the RE-2/TDR Zone. Its side yard setbacks of 35.1 feet and 214.5 feet exceed the minimum requirements of the Zoning Ordinance.

- (d) *Off-street parking must be provided in the amount of one space for every 4 beds and one space for 2 employees on the largest work shift, except the Board may specify additional off-street parking spaces where the method of operation or type of care to be provided indicates an increase will be needed.*

The Board finds that twelve parking spaces are provided for the 30 beds and eight employees present for each shift. The Board finds that sufficient off-street parking, consistent with Division E of the Zoning Ordinance will be provided.

Therefore, based on the foregoing, the Board **GRANTS** the Special Exception in Case No. S-2459 subject to the following conditions:

1. The Applicant is bound by its testimony and exhibits of record, the testimony of its witnesses and representations of its attorney, to the extent that such evidence and representations are identified in this Opinion.
2. The building height shall be a maximum of three (3) floors and the building footprint shall be the same as the original footprint proposed. The maximum number of units shall be 110 units as approved during the Worksession of July 24, 2001. The height of the building shall be reduced by the re-grading as proposed by the applicant in its amendment of May 11, 2001 (Exhibit No. 198(a)-(f)) with the new finished floor elevation at 472 feet.
3. The Applicant must comply with Chapter 50 (the Subdivision Regulations) of the Montgomery County Code 1994, as amended, and obtain Planning Board approval of amendment to Preliminary Plan 1- 97023.

4. The Applicant must obtain approval of a Final Forest Conservation Plan prior to release of sediment and erosion control or building permits, as appropriate.
5. The Applicant must comply with all Montgomery County Department of Permitting Services requirements for stormwater management.
6. Any required construction of sewer on the Baileys Lane side of the property will be installed at an angle to minimize the impact of tree removal. (See Exhibit No. 198(f)). Trees that are removed will be replaced with a mix of trees of 2" caliper and minimum 10 foot tall evergreens, including Leland Cypress.
7. The Applicant must comply with the landscape and lighting plans (Exhibit Nos. 185 and 240(b), (c), and (d)). The light poles will be limited to ten feet in height measured from the ground and the bulbs will be no more than 70-watt high-pressure sodium. (Exhibit Nos. 240 (b) and (c)). The Applicant shall insure that the height of the berm between Norbeck Road and the parking area must be a minimum of 10 feet instead of the 8 feet proposed by the Applicant.
8. The Applicant must adhere to the amended Site Plan (Exhibit No. 198 (f)) as modified, to depict a three story building containing 110 rental units and the other facilities and amenities depicted on the Plan. The Applicant must submit to the Board a modified Site Plan depicting the features of the Subject Property as approved by the Board.
9. The Applicant must construct the building as depicted on the revised elevations. (Exhibit No. 199(g)).
10. The Applicant must adhere to the submitted statement of operations. (Exhibit No. 3). Employees shall not arrive or leave by car between 7:00 A.M. and 9:00 A.M. and between 4:00 P.M. and 6:00 P.M. The Applicant shall have a maximum of four (4) full-time employees, with one (1) employee living on site.
11. The Applicant must use the construction materials identified on Exhibit No. 22.
12. The Applicant must provide for the use of the residents a contract van service or shuttle bus system for access to nearby facilities, (e.g. Leisure World, Glenmont Metro Station, etc.).
13. Applicant must secure approval of a waiver of the number of parking spaces required by the Department of Permitting Services. If the parking waiver is not approved, the applicant must obtain approval of a revised Site Plan by the Board of Appeals
14. Subject to Condition 13, the parking facility associated with this project must comply with standards and guidelines set out in the Zoning Ordinance for facilities in residential zones.

15. Left turns from the main access to Norbeck Road must be prohibited and the Applicant must construct the driveway to Norbeck Boulevard depicted on Exhibit No. 198(f).
16. The Applicant must coordinate with the Maryland State Highway Administration regarding site access approval on Norbeck Road, including entrance reconstruction and provision of standard acceleration, deceleration and left turn lanes.
17. At least 20 percent of the independent elderly housing units must qualify as Moderately Priced Dwelling Units (MPDU's).
18. The Applicant must obtain a Special Ceiling Allocation for Affordable Housing under the Annual Growth Policy.
19. Applicant's sign shall be constructed in accordance with Montgomery County Sign Ordinance. Any sign more than two square feet shall be reviewed by the Montgomery County Sign Review Board
20. There shall be a Community Council established by the Applicant that shall meet two times per year. The People's Counsel for Montgomery County shall be an ex officio member of the Community Council.

And, **therefore**, based on the foregoing, the Board **GRANTS** the Special Exception in **Case No. S-2460 subject to the following conditions**:

1. **The Applicant is bound by its testimony and exhibits of record, the testimony of its witnesses and representations of its attorney, to the extent that such evidence and representations are identified in this Opinion.**
2. **The Applicant must comply with Chapter 50 (the Subdivision Regulations) of the Montgomery County Code 1994, as amended, and obtain Planning Board approval of amendment to Preliminary Plan 1-97023.**
3. **The Applicant must obtain approval of a Final Forest Conservation Plan prior to release of sediment and erosion control or building permits, as appropriate.**
4. **The Applicant must comply with all requirements for stormwater management.**
5. **The Applicant must comply with the landscape and lighting plans. (S-2459, Exhibits 185, 240(b), (c) and (d)). The light poles will be limited to ten feet in height measured from the ground, the bulbs will be no more than 70-watt high-pressure sodium. (Exhibit Nos. 240 (b) and (c)). The Applicant shall insure that the height of the berm between Norbeck Road and the parking area must be a minimum of 10 feet instead of the 8 feet proposed by the Applicant.**

6. **The Applicant must adhere to the Site Plan. (S-2460, Exhibit No. 61(d) and S-2459, Exhibit No. 198(f)).**
7. **The Applicant must adhere to the statement of operations. (S-2460, Exhibit No. 3). Employees shall not arrive or leave by car between 7:00 A.M. and 9:00 A.M. and between 4:00 P.M. and 6:00 P.M. The Applicant shall have a maximum of twelve (12) full-time employees, and six (6) part-time employees.**
8. **The Applicant must provide for the use of the residents a contract van service or shuttle bus system for access to nearby facilities, (e.g. Leisure World, Glenmont Metro Station, etc.).**
9. **The Applicant must use the construction materials identified on S-2459, Exhibit No. 22. The materials shall include triple glazed windows and resilient channels to maintain an interior ambient noise level at or below 45 dba.**
10. **The parking facility associated with this project must comply with the standards and guidelines set out in the Zoning Ordinance for facilities in residential zones.**
11. **Left turns from the main access to Norbeck Road must be prohibited and the Applicant must construct the driveway to Norbeck Boulevard depicted on Exhibit No. 198(f).**
12. **The Applicant must coordinate with the Maryland State Highway Administration regarding site access approval on Norbeck Road, including entrance reconstruction and provision of standard acceleration, deceleration and left turn lanes.**

On motion by Louise L. Mayer, seconded by Angelo M. Caputo, with Donna L. Barron, Vice Chair, and Donald H. Spence, Jr., Chairman, participating and in agreement and Board Member Mindy Pittell Hurwitz absent and not participating, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the Opinion stated above is adopted as the Resolution required by law as its decision in the above-entitled cases.

Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 16th day of August, 2001.

Katherine Freeman
Executive Secretary to the Board

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.

See Section 59-A-4.53 of the Zoning Ordinance regarding the 24 months' period within which the special exception granted by the Board must be exercised.

See Section 59-A-3.2 of the Zoning Ordinance regarding Use and Occupancy Permits for a Special Exception.